

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.1763 OF 2007
IN
EXECUTION APPLICATION NO.467 OF 2000
IN
SUMMARY SUIT NO.4229 OF 1998

Krishnamurari Sheltrs Pvt. Ltd. ..Plaintiffs/
Decree holder

Vs.

Jayant Moreshwar Paranjape ..Defendant/
Judgment debtor

And
Ms.Janhavi Jayant Paranjape ..Applicant.

Mr.Chirag Balsara with Ms.Gada i/b.M/s.Harakhchand &
Co. for the Defendants.

Mr.V.A.Sawant i/b.Nitin A. Ghavre for the
Applicant.

**CORAM : S.J. VAZIFDAR, J.
DATED : 27TH NOVEMBER, 2007**

P.C. :

By this Chamber Summons the Applicant seeks an order directing the Sheriff of Mumbai to hand over the keys of the residential premises referred to therein and for an order permitting her to stay in the said premises.

The Applicant is the daughter of the Defendant.

2. It is common ground that the premises which are

the subject matter of the present Chamber Summons were not to be proceeded against in execution till execution was levied in respect of certain other properties.

3. It is important to note that the Defendant has only a 1/6th undivided share in the said property. The Applicant herself has an independent right therein. The Applicant has now come to Mumbai and desires to reside in the said property.

4. Pursuant to an order of attachment, the property stands attached. Ordinarily, despite the attachment, there could be no objection to the Applicant exercising her right of residence in the said property especially when none of the co-sharers has opposed the same. Ordinarily, the Plaintiff would also be entitled to execute the decree in respect of the Defendant's 1/6th share in the said property. However, it appears that pursuant to previous orders execution proceedings against the said property has not been adopted yet.

5. The seal of the premises was ordered to be opened by an order dated 28.9.2005 for the purpose of inspection of the said flat. By the said order,

the keys were ordered thereafter to be directed to be deposited with the Sheriff of Mumbai as at that point of time the premises were not occupied. It is in these circumstances, that the keys are now lying with the Sheriff of Mumbai. That by itself would not preclude the Applicant from staying the premises. The Plaintiff, judgment creditor is not prejudiced in any manner whatsoever by the co-sharers of the property residing therein, especially in view of the fact that the Defendant, judgment debtor has only a 1/6th share therein and execution in respect thereof has not yet been ordered.

6. Mr.Balsara however submits that a similar application had been made by the Defendant and by the brother and mother of the Defendant. By an order dated 10.7.2006 the learned Judge recorded that the Defendant was to hand over documents and title deeds in respect of the agricultural lands against which the execution was ordered. In respect of certain other lands, the Defendant agreed to cooperate with the Sheriff of Mumbai in transmission of the title deeds from the office of the Sub Registrar of Assurances, Pune to Sheriff of Mumbai. The Defendant was also granted time to identify

other agricultural lands. The learned Judge recorded that the Defendant's application in the Judge's order for being handed over the keys would be considered after compliance with the above.

7. Firstly, it ought to be noted that was an application by the Defendant. That the Applicant is his daughter would really make no difference. She has an independent right in the property. The Defendant has only a 1/6th share therein.

8. Moreover, after the said order, by an order dated 20.9.2006 it was recorded that the title deeds in respect of the agricultural plots had been deposited with the Sheriff of Mumbai in a covering letter dated 14.9.2006. There is nothing to indicate that the Defendant has not cooperated in the transmission of the documents. In any event, it is agreed that if the Defendant does not sign any documents necessary for the transmission thereof, as recorded in the order dated 28.9.2005, the Sheriff shall be entitled to do so on behalf of the Defendants.

9. The only other thing that remains is regarding the identification of the plots. The site report

dated 4.8.2006 indicates that the representative of the Defendant was unable to identify two plots. The attachment however on two other plots viz. plot Nos.3 and 5 has already been levied.

10. In these circumstances, I see no justification for preventing the Applicant from occupying the premises in which she undeniably has a right. There is no order thus far that precludes the Applicant from occupying the said premises. I do not read any of the previous orders as denying the Applicant any such right.

11. I am not inclined to deny her that right on the ground stated by Mr.Balsara viz. that it is only if pressure is exerted on the Applicant by denying her rights that her father will honour the decree. Court proceedings are to be conducted in accordance with law. The suggestion on the Plaintiff's behalf is contrary to the rule of law.

12. There is nothing that prevents the Plaintiff from executing the decree. The Plaintiff is also at liberty to make an application for executing the decree in respect of the Defendant's 1/6th share in the said property if, as according to the Plaintiff,

the Defendant has obstructed or hindered the execution in respect of the other properties in any manner whatsoever. To date there is no such application. Further, even in the event of such an application, the right of third parties, even though they may be relatives of the Defendant, cannot be denied.

13. It is however necessary to protect the Plaintiff's rights in respect of the said property and that has already been done by virtue of the attachment. It is further clarified that no rights would be created in favour of the Defendant merely by virtue of the present order.

14. In the circumstances, the Chamber Summons is made absolute in terms of prayers (a), (b) and (c).

15. this order shall remain stayed upto and inclusive of 10th December, 2007.